

Exhibit A



Planet Depos®
We Make It *Happen™*

Transcript of Al Hank, Corporate Designee

Date: June 27, 2019

Case: Graham -v- Famous Dave's Of America, Inc., et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

Transcript of Al Hank, Corporate Designee

Conducted on June 27, 2019

22

1 Q Okay. Does Famous Dave's utilize a tip
2 credit?

3 A Yes.

4 Q Okay. Do you know what states Famous
5 Dave's utilizes a tip credit in?

6 A All states we operate in.

7 Q Okay.

8 A Except for Minnesota because Minnesota
9 would be as a non -- we have to pay minimum wage
10 for all tip positions.

11 Q Okay. You say tip positions, what tip
12 positions are there within Famous Dave's?

13 A Server, bartender, host. I think
14 catering would be a position that can receive tips
15 as well.

16 Q Okay. Do you know if the catering
17 position, they are paid the full minimum wage in
18 addition to receiving tips or if they're paid a
19 sub minimum wage with the expectation of the tips
20 plus a sub minimum wage will equal a minimum wage?

21 A Our catering wages are paid well above
22 minimum wage. Plus able to receive tips.

Transcript of Al Hank, Corporate Designee

Conducted on June 27, 2019

23

1 Q Okay. Whereas -- and just so that we
2 make sure we have the same -- speaking the same, a
3 server is paid below, for example, the federal
4 minimum wage of 7.25 with the expectation that
5 their tips plus the cash wage that Famous Dave's
6 pays them will equal or exceed the minimum wage?

7 A In the states that were able to do so,
8 yes.

9 Q Right. Okay. And the exception you
10 said as Minnesota because Minnesota --

11 A Correct. Is not a tip credit state.

12 Q Is not tip credit. Okay. To your
13 knowledge has Famous Dave's used the tip credit
14 continuously since January of 2016?

15 A Yes.

16 Q Okay. Do you know the circumstances in
17 which an employer may utilize the tip credit?

18 A Can you repeat the question?

19 Q Yeah. Do you know the circumstances or
20 what requirements have to be met in order for an
21 employer to use the tip credit, if you know?

22 A I'm not sure I'm understanding. From a

Transcript of Al Hank, Corporate Designee

Conducted on June 27, 2019

25

1 recognize that document?

2 A Yes.

3 Q Okay. What is that document? Is that
4 document the FAQ that you just referenced?

5 A Yes.

6 Q Okay. Is this a document that you
7 reviewed in preparation for today?

8 A Yes.

9 Q Okay. Within Famous Dave's when
10 a -- no, let me step back. For servers,
11 bartenders and hosts for purposes of today is it
12 fair if we refer to them as tipped employees?

13 A Yes.

14 Q Okay. When a new tipped employee is
15 brought onto Famous Dave's do they go through a
16 hiring process?

17 A Yes.

18 Q Or a training process?

19 A Yes.

20 Q Okay. Can you describe for me what that
21 training process is?

22 A The training process would start with

Transcript of Al Hank, Corporate Designee

Conducted on June 27, 2019

52

1 Q To your knowledge is this a document
2 that Famous Dave's uses to inform tipped employees
3 that intends to take a tip credit?

4 A Exhibit 2?

5 Q Yes.

6 A Can you restate the question a little
7 please?

8 Q Certainly. Is Exhibit 2, the document
9 that's titled Fair Labor Standards Act Notice to
10 Tipped Employees, is this the document that Famous
11 Dave's uses to notify tipped employees of intent
12 to take a tip credit?

13 A I think it's a piece of it and also our
14 tip pooling and reporting policy as well.

15 Q Okay. And the tip pooling and reporting
16 policy that you just referenced, would that be
17 Exhibit 4?

18 A That's correct.

19 Q Okay. So as I understand your
20 testimony, Exhibits 2 and Exhibit 4 are the
21 documents that Famous Dave's uses to notify tipped
22 employees intent to take a tip credit?

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

53

1 A To my knowledge, yes.

2 Q Okay. When you were a general manager -
3 -

4 A Yes.

5 Q -- was there any other document that was
6 used? Was there any document that was used to
7 notify tipped employees of their intent to take a
8 tip credit?

9 A I don't remember quite honestly.

10 Q Okay. Exhibit 2, at the bottom it says
11 just above the number, the FDA 000034, and I will
12 represent to you that those are letters that we
13 lawyers put on documents so that way we can
14 reference them. Just above that number there's a
15 date, May 2011. Do you see that?

16 A Yes.

17 Q Okay. To your knowledge was this
18 document developed in or around May of 2011, if
19 you know?

20 A Yes.

21 Q Okay. To your knowledge has this
22 document been subsequently revised at any point

Transcript of Al Hank, Corporate Designee

Conducted on June 27, 2019

56

1 presented to me?

2 Q Correct.

3 A Not that I can recall, no.

4 Q Okay. With respect to Exhibit 2, to
5 your knowledge was it Famous Dave's intent that
6 this document apply to all employees that they
7 intended to utilize a tip credit for?

8 A Yes. For tip credit employees, yes.

9 Q Okay. And that means this policy
10 applied -- Exhibit 2 applied to all Famous Dave's
11 restaurants regardless of the state that they're
12 in, correct?

13 A I can speak for the corporately owned
14 restaurants, yes.

15 Q Yes. Just for the corporately owned.

16 A Yes.

17 Q Yes. Okay. Do you know how this
18 document is sent to or distributed to the
19 individual restaurants?

20 A Today?

21 Q Yes.

22 A This would be in electronic format.

Transcript of Al Hank, Corporate Designee

Conducted on June 27, 2019

57

1 Q An electronic format available on a
2 platform?

3 A Yes, it would be -- in current state it
4 would be in ADP and as a part of their onboarding
5 process.

6 Q Okay. And do you know when that ADP
7 onboarding process first began being utilized by
8 Famous Dave's?

9 A I wouldn't feel comfortable giving an
10 exact time frame. There's been, like I stated
11 earlier, quite a few variations and turnover. I
12 don't know off the top of my head.

13 Q Okay. To your knowledge are individual
14 restaurants able to revise or edit Exhibit 2?

15 A No.

16 Q Okay. To your knowledge is there any
17 difference between Exhibit 2 based on the state
18 that a restaurant may be located in?

19 A No, not to my knowledge.

20 Q Let's start back in February 2016. How
21 was Exhibit 2 presented to an employee in February
22 of 2016?

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

63

1 on paper.

2 Q Correct.

3 A Okay. So on paper they would do the
4 orientation process in-person with the team
5 member. They would review, acknowledge, sign
6 policies. Those records would be retained in
7 their employee file in the manager's office and
8 that would be something that would be spot checked
9 and verified by the area director on their trip
10 reports.

11 Q Other than that spot check by an area
12 manager, was there any other confirmation by
13 Famous Dave's above the manager level that the
14 form was actually reviewed and signed by the
15 employee?

16 A Not that I recall.

17 Q Okay. To your knowledge is there any
18 documentation that my client has signed a copy of
19 Exhibit 2?

20 A I believe so because I believe it was on
21 electronic format and to my understanding of how
22 the system works, we wouldn't have been able to

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

64

1 complete the hiring process without the
2 acknowledgement.

3 Q Is there any confirmation that that was
4 done within the process because I haven't seen
5 anything.

6 A No, I do not have confirmation right
7 now.

8 Q Okay. Other than Exhibit 2 and Exhibit
9 4 which is -- is there any other information
10 provided to managers regarding Famous Dave's use
11 of the tip credit?

12 A It would be part of their training. So
13 when they're going through their what we call MIT
14 training which just stands for manager-in-
15 training, it's part of the review of that training
16 process. They have an eight-week training program
17 when they're going into management and how we
18 would handle whether it's orientations or
19 onboarding. All of those aspects are covered
20 during that training process.

21 Q Are managers -- okay, that eight-week
22 training program, how long has that been in

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

68

1 receives go into the tip pool?

2 A Sorry. I'm just reading the --

3 Q Uh-huh.

4 A And can you restate the question?
5 Sorry.

6 MR. WELLS: Yeah, you want to read that
7 part back?

8 COURT REPORTER: Yeah.

9 (Court reporter played back previous
10 question.)

11 Q Okay. What does it mean? How much of
12 the employee's tips go into the tip pool?

13 A The servers would contribute three
14 percent of their net sales to a tip pool and then
15 those -- 100 percent of those tips that are funded
16 from the servers would then be allocated amongst
17 the tipped employees for that shift dependent upon
18 hours worked and the designation of the split by
19 the general manager. So it could be, for example,
20 hosts and bartenders --

21 Q Right.

22 A -- would be tipped employees and the

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

70

1 of their tips but rather that limit of three
2 percent that you described for me?

3 MS. SMITHEY: Objection. You can
4 answer.

5 A I'm sorry. One more time.

6 Q Yeah. Is there -- are tipped employees
7 informed that contrary to how this sentence is
8 written that they do not have to contribute 100
9 percent of their tips to the tip pool but rather
10 that cap of three percent that you described for
11 me?

12 A I do believe that we have it in writing.
13 I don't know that I know off the top of my head
14 what policy it is.

15 Q Do you know if that document that you're
16 referencing that you believe is in writing, is
17 that a document you reviewed in preparation for
18 today's deposition?

19 A No, not that I recall.

20 Q Okay. Do you know if that document was
21 produced as part of discovery in this case?

22 A I don't -- I don't think so.

Transcript of Al Hank, Corporate Designee

Conducted on June 27, 2019

77

1 how a manager would be trained on how they would
2 notify the team member?

3 Q Yeah.

4 A I mean that would be covered in the
5 orientation I guess. I'm not sure -- I may be a
6 little confused. I'm sorry.

7 Q And I don't want you to be confused so
8 let's -- let me try to break this down. Exhibit 2
9 is what a new hire tipped employee is given by the
10 manager at orientation, correct?

11 A Correct.

12 Q Okay. And when a manager is going
13 through their training, their eight-week training
14 part of what they witness is they witness another
15 manager orient a new hire including the review of
16 Exhibit 2, correct?

17 A Correct.

18 Q Okay. Setting that aside, is there any
19 other training that is provided to a new manager
20 with respect to the tip credit notification?

21 A No, not to my knowledge.

22 Q Okay. Have you heard the term "dine and

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

78

1 dash"?

2 A Yes.

3 Q Okay. What's your understanding of what
4 the term "dine and dash" means?

5 A There would be customers in the
6 restaurant who would order something, something
7 would be given them of value and they would leave
8 the restaurant without paying.

9 Q In your many years of experience within
10 the restaurant industry have you ever witnessed or
11 heard of a dine and dash occurring at Famous
12 Dave's?

13 A Yes.

14 Q Okay. More than one occasion?

15 A Yes.

16 Q Okay. Is there a written policy within
17 Famous Dave's regarding dine and dashes?

18 A No, not to my knowledge.

19 Q Okay. Are managers provided any written
20 directive that says a tipped employee is not
21 required or not responsible for a dine and dash?

22 A Not that I recall, no.

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

79

1 Q Okay. Are managers provided any written
2 material that says an employee cannot be required
3 to surrender part of their tips to cover a dine
4 and dash?

5 A Not to my knowledge.

6 Q Okay. Exhibit 5, the cash handling. Is
7 this another -- this is another policy that's
8 reviewed as part of a tipped employee's new hire
9 orientation, correct?

10 A Correct.

11 Q Okay. Are all tipped employees subject
12 to this policy?

13 A Yes.

14 Q Okay. And therefore this policy covers
15 all Famous Dave's company owned locations,
16 correct?

17 A Correct.

18 Q Okay. At the top of this document it
19 says effective July 2015. Do you see that?

20 A Yes.

21 Q Okay. To your knowledge was there a
22 prior version of this document?

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

96

1 Q Okay. Is that the MICROS that you were
2 just talking about earlier at the beginning of the
3 deposition?

4 A MICROS is the point-of-sale.

5 Q Okay. So let's -- point-of-sale, I
6 think I understand but I want to have the record
7 clear. Point-of-sale, is that the system that a
8 tipped employee uses to enter a customer's order?

9 A Yes.

10 Q Okay. As well as close out their check?

11 A Yes.

12 Q Okay. Is it also a system that they
13 typically uses to clock in and clock out the
14 beginning and end of their shift?

15 A Correct.

16 Q Okay. Has that point -- has the point-
17 of-sale system in all the function that we just
18 described been used by Famous Dave's since
19 February of 2016 to present?

20 A Yes.

21 Q Okay. Has the same system, point-of-
22 sale system been used by Famous Dave's during that

Transcript of Al Hank, Corporate Designee

Conducted on June 27, 2019

100

1 A Yes. Slight variation because they have
2 a cash drawer that they're operating under, but
3 yes.

4 Q Okay. And all servers use the same POS
5 system, correct?

6 A Yes. We did install a -- I was just
7 thinking of we just did install a new point-of-
8 sale system in our Minnetonka, Minnesota location.
9 That was about six months ago. Just a single unit
10 and then subsequently in one of our acquisitions
11 we've also rolled out a new point-of-sale in the
12 last month or two.

13 Q Are those two locations --

14 A Sorry. It would be seven restaurants in
15 total amount.

16 Q Are you thinking about switching the
17 point-of-sale system?

18 A There's potential, yes.

19 Q Okay. On Exhibit 7, just so I can make
20 sure I can understand all the other documents
21 (inaudible) each and every one, under timekeeping
22 policy it says, For use with all non-exempt team

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

101

1 members, FOH and BOH. FOH, is that front of
2 house?

3 A Correct.

4 Q Who are front of house employees?

5 A The job codes?

6 Q Yes.

7 A To-go, cashiers, hosts, servers,
8 bartenders. Catering would fall under front of
9 house. Delivery is a job code. I think that
10 covers most of them.

11 Q So all servers and all bartenders are
12 considered front of house?

13 A Correct.

14 Q Is front of house positions, are they
15 considered customer facing, customer interaction
16 positions?

17 A Yes.

18 Q Okay. BOH, is that back of house?

19 A Correct.

20 Q I think I have an idea what BOH is but -
21 -

22 A Line cook, prep cook, dishwashers,

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

102

1 expediters. Those positions are back of house
2 team members.

3 Q Okay. So as a clear delineation, front
4 of house are folks who interact with customers
5 directly and back of house do not interact with
6 customers directly?

7 A Yes. Generally speaking, yes.

8 Q Okay. Do you know approximately how
9 many tipped employees Famous Dave's currently
10 employs, ballpark?

11 A You said currently, correct?

12 Q Yes.

13 A Five, six hundred maybe.

14 Q Within Famous Dave's is there a
15 guideline with respect to how many tipped
16 employees are needed to staff a restaurant?

17 A No, because staffing levels would be
18 dependent upon volume. So it would just be
19 dependent on the location, how that restaurant
20 performs.

21 Q Within Famous Dave's do they breakout
22 restaurants based upon volume of sales?

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

104

1 restaurant would have a certain amount of -- level
2 of server?

3 A There's a variety of platforms that we
4 use to help with scheduling and those items, yeah.
5 A lot of it is derived off of guest counts. You
6 know, hourly trends, et cetera. But we have a ton
7 of applications that are used to help that, yes.

8 Q So those applications that you use, what
9 would they expect the level of staffing to be for
10 that restaurant?

11 A As far as a head count --

12 Q Yeah.

13 A -- is concerned on a two-and-a-half
14 million?

15 Q Uh-huh.

16 A Servers, 15 roughly.

17 Q Okay. And how about for bartenders?

18 A Four.

19 Q Okay. Who sets the target for the
20 number of tipped employees that are kind of
21 different shift? Is that done at the management
22 level or the manager level or the corporate level?

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

106

1 Q Okay. Are all servers expected to
2 conform to the general duty and responsibility set
3 forth in this job description?

4 A Yes.

5 Q Okay. Under other factors on the second
6 page it says, EG travel. Do you see that?

7 A Yes.

8 Q And it says, Comments, up to 15 percent,
9 may deliver full-service catering. What's that
10 mean?

11 A That's where a team member would have to
12 travel from the restaurant to a outside catering
13 event and (inaudible).

14 Q Okay. Does an individual employee
15 receive a copy of this job description?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes.

19 Q Okay.

20 A I was kind of doing good in the
21 beginning. I've gone down now.

22 Q You're doing well until the court

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

109

1 Q Are all servers expected if necessary to
2 perform these tasks?

3 A They all don't do that, no.

4 Q They all don't do that?

5 A Correct.

6 Q Could they do these tasks?

7 A Sure. It could happen, yes.

8 Q Could a server be asked to do any one or
9 more of these tasks?

10 A Yes.

11 Q Okay. Would a server because it's in
12 his job summary potentially be subject to
13 termination or reprimand if they don't perform one
14 of these side tasks, side duties?

15 A Yes.

16 Q Okay. It says rolling silverware. It's
17 been a few years since I've been in a restaurant
18 but is that where you actually roll a fork and
19 knife in a napkin?

20 A Correct.

21 Q Okay. Expediting orders, what's that?

22 A That would be where the food is sold in

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

112

1 A Yes.

2 Q Okay. Have you ever inquired as to why
3 there's essential columns there?

4 A No.

5 Q Okay. What's that "we" column?

6 A How much of the job is -- of the total
7 job how much they'll be doing that work.

8 Q Okay. Who determined that estimation,
9 do you know?

10 A This would come from our HR department
11 and outside legal counsel, et cetera.

12 Q Okay. Has Famous Dave's done any, to
13 your knowledge, internal counting to determine the
14 percentage of an employee -- of a server's job
15 that is spent performing side work?

16 A Not to my knowledge.

17 Q Okay. Does Famous Dave's have any
18 directives or policies with respect to limiting an
19 amount of a server's side work?

20 A Right now when servers are coming in for
21 the beginning of their shift and there's opening
22 duties they are clocked -- they clock in at

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

113

1 minimum wage. They would convert to the tipped
2 wage once they received their table.

3 Q Okay. When did that policy change
4 occur?

5 A Somewhere in the last year-and-a-half or
6 so.

7 Q Okay. Do you know why that policy
8 change occurred?

9 A It was part of our review of what we
10 were doing inside of the restaurants.

11 Q Okay. So if I understand correctly in
12 the last approximately year-and-a-half servers
13 when they come in if they're performing opening
14 duties they clock in and get paid the full minimum
15 wage rate and then once they get assigned their
16 first table they clock in under their tipped
17 server code?

18 A Correct.

19 Q Okay. Is there any other time when a
20 server would clock in under a full minimum wage
21 rate?

22 A If they were training they'll get paid a

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

114

1 higher rate and at the end of the shift if there
2 was, you know, a large amount of additional work
3 that was about to occur they would switch to a
4 minimum wage rate.

5 Q Who determines if there's a large amount
6 of closing work to be done that the server should
7 clock in under the full minimum wage rate?

8 A Management.

9 Q Management. Okay. Is there any
10 guidance or directive provided to management to
11 let them know, hey, this is a large amount of
12 closing work and therefore you should have
13 employees clock in under the full minimum wage
14 rate?

15 A Nothing specifically that I can think
16 of.

17 Q Okay. And that notion that if there's a
18 large amount of closing work that they should
19 clock in under full minimum wage rate, has that
20 been in place for approximately the last year-and-
21 a-half or longer?

22 A Approximately the last year-and-a-half.

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

115

1 Q Okay. You also said a server can clock
2 in if they're training and get paid the full
3 minimum wage. How long has that policy been in
4 place that if a server is training they are
5 clocking under the full minimum wage?

6 A As long as I can remember.

7 Q Okay. And that training, is that the
8 four days of training that you described for me
9 earlier today?

10 A Correct.

11 Q Okay. So just to summarize, and tell me
12 if I'm wrong, for at least well before 2016 if a
13 server was engaged in a four days, or bartender,
14 engaged in a four days of training they always
15 clocked in and got paid a full minimum wage?

16 A Correct.

17 Q After they're done training they always
18 clocked in or paid at the tipped rate up until
19 approximately a year-and-a-half ago where if
20 they're doing opening work they now get paid the
21 full minimum wage, correct?

22 A Correct.

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

136

1 Q Okay. And are servers required to make
2 sure that that setup remains at the beginning or
3 end of the shift?

4 A Yes.

5 (Exhibit 12 was marked for
6 identification and is attached to the transcript.)

7 Q I'm going to hand you what's been marked
8 as Exhibit 12. Do you recognize this document?

9 A Yes.

10 Q What is Exhibit 12?

11 A Bartender job description.

12 Q Okay. Do all bartenders within Famous
13 Dave's, are they expected to comply with the
14 duties and responsibilities here?

15 A Yes.

16 Q Okay. It says April 2015. Do you know
17 if this job description has been updated since
18 then?

19 A I'm not sure.

20 Q Okay. Again, on the second page it
21 says, Travel, up to 15 percent. Is this for
22 catering and vending?

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

140

1 Q Okay. When a server is required to expo
2 do they expo for their entire shift?

3 A Typically.

4 Q Typically. Okay. When a server expos
5 for an entire shift are they in the payroll under
6 a server job code or an expo job code?

7 A Expeditor.

8 Q Expeditor. Okay. Is there a directive
9 to the restaurants that says exactly that, if a
10 server is going to expedite they need to be under
11 the expeditor job code?

12 A There is an expeditor job description.

13 Q Okay.

14 MR. WELLS: I'm going to ask that that
15 get produced because I don't think we have that.

16 Q Do expeditors share in the tip pool?

17 A Yes.

18 Q They do. Okay.

19 A Most of the time, yes, from what I've
20 experienced.

21 Q From what you experienced, okay. Is
22 there any guideline or directive from Famous

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

152

1 Q So it's no longer a hard copy?

2 A That's correct.

3 Q Okay. Other than an update, are you
4 aware of any other updates done to the server
5 training guide?

6 A As far as content?

7 Q Yes.

8 A I believe there has been content but I
9 wouldn't be able to specifically say what.

10 Q Okay. Has the server's job duties
11 fundamentally changed in that time period?

12 A No.

13 Q Okay. Has a bartender's job duties
14 fundamentally changed in that time period of
15 February 2016 to present?

16 A No.

17 Q Okay. Has the bartender training guide
18 gone online?

19 A Yes.

20 Q Okay. Are employee -- do all employees
21 operate under an employee handbook?

22 A Yes.

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

153

1 Q Okay. Is that employee handbook
2 prepared by corporate?

3 A Yes.

4 Q Do you know how many iterations of the
5 employee handbook there have been since February
6 of 2016 to present?

7 A I believe two.

8 Q Okay. Did you review any employee
9 handbooks in preparation for today?

10 A The older one, yes.

11 Q The older one. Okay. Let me -- don't
12 worry. You don't have to keep any of those
13 documents.

14 (Exhibit 14 was marked for
15 identification and is attached to the transcript.)

16 Q Mr. Hank, my first question is do you
17 recognize Exhibit 14?

18 A Yes.

19 Q Is this the older handbook that you
20 referenced --

21 A Yes.

22 Q -- that you reviewed in preparation for

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

162

1 Q Do you know what the 80/20 tip credit
2 rule is?

3 A I do.

4 Q What is the 80/20 tip credit rule?

5 A That a tip credit employee would not be
6 able to spend more than 20 percent of their total
7 time worked in a non-tipped job or function of the
8 job.

9 Q During the time period of February of
10 2016 to present has there been any policy or
11 procedure in place within Famous Dave's to make
12 sure that that 80/20 tip credit rule was not
13 violated?

14 A Yes.

15 Q Okay. What was that?

16 A Servers clocking in at the beginning of
17 their shift for minimum wage.

18 Q And you said that went into effect about
19 a year-and-a-half ago?

20 A Roughly.

21 Q Okay. Other than that is there any
22 other policy or procedure in place within Famous

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

163

1 Dave's to ensure that the 80/20 rule was not
2 violated?

3 A Not that I'm aware of.

4 Q Okay. That's the only question I have
5 at this time. Walk me through the time clocks.
6 It's the same POS system throughout all Famous
7 Dave's used for employees to enter their time,
8 correct?

9 A No, as I mentioned earlier we have a new
10 test point-of-sale in currently seven of our
11 locations.

12 Q Right. Okay. Other than those -- let
13 me ask you this, how an employee clocks in, is
14 that the same in both those seven test restaurants
15 and the other restaurants or is it fundamentally
16 different?

17 A Basically the same.

18 Q Okay. How does an hourly tipped
19 employee clock in?

20 A Through our point-of sale.

21 Q Okay. And they clock in by doing what?

22 A Either swiping a unique card --

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

164

1 Q Okay.

2 A -- or a unique pin.

3 Q Okay. And that unique card or that
4 unique pin, is that assigned by Famous Dave's?

5 A Yes.

6 Q Okay. And when is it assigned by Famous
7 Dave's?

8 A It's assigned by the management.

9 Q I'm sorry. When is it assigned by the
10 management to that employee?

11 A During orientation or first shift.

12 Q Okay. So an employee clocks in through
13 either the unique pin or the unique timecard to
14 begin the clock counting their time, correct?

15 A Correct.

16 Q Okay. Does an employee need to do
17 anything else to begin the clock running?

18 A No.

19 Q Okay. When is an employee expected to
20 clock in?

21 A When they're scheduled.

22 Q Okay. Is there any limitation provided

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

186

1 servers that have nonetheless received a
2 counseling form?

3 A I would say in my opinion it would not
4 be a commonality that counseling forms would be a
5 model employee.

6 Q Okay. You said forms there. How about
7 a single form?

8 A There could be, sure.

9 Q Okay. And just so the record is clear,
10 the only counseling form in my client's file was
11 that single form that we looked at earlier,
12 Exhibit 18?

13 MS. SMITHEY: Objection.

14 A That we've discovered thus far.

15 Q That you've discovered thus far. Okay.
16 Are you aware of any policy or procedure in review
17 of my client's file that exempted him from other
18 policies that applied to servers? In other words,
19 was there a policy that only applied to my client?

20 A Not to my knowledge, no.

21 Q What's your familiarity with wage
22 statements that servers receive? I'm not sure if

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

189

1 this does it look like my client worked at least
2 some period of overtime?

3 A Yes.

4 Q Okay. Hank, I need to ask you a couple
5 of basic questions. Payroll within Famous Dave's,
6 is it weekly, bi-weekly, monthly, how is -- what
7 is it?

8 A Bi-weekly.

9 Q Bi-weekly. Okay. So when is the start
10 date and when is the cutoff date?

11 A Our payroll weeks run Monday through
12 Sunday.

13 Q Monday through Sunday. Okay. So if I
14 work on a Sunday I'll get paid for that Sunday two
15 weeks thereafter.

16 A Depending on what week of the payroll
17 cycle we're in.

18 Q Yeah. I'm sorry. So what day is
19 payroll, is paychecks?

20 A Friday.

21 Q Friday. Okay. So payroll runs Monday
22 through Sunday and pays on Friday, correct?

Transcript of Al Hank, Corporate Designee
Conducted on June 27, 2019

194

1 yes or no question. Do you have any substantive
2 conversations with your counsel about today's
3 deposition, yes or no?

4 A No.

5 Q Okay. With respect to my client's pay
6 records, Bates page 146, the regular rate it says
7 five bucks, do you see that -- \$5, do you see
8 that?

9 A Yes.

10 Q Okay. And I see that that lines up with
11 his rate of pay on Bates page or document Exhibit
12 19, his work history.

13 A Yes.

14 Q So is that fair to say that my client
15 was paid at an hourly rate of \$5 while working as
16 a server?

17 A Yes.

18 Q Okay. Because I note that in the rest
19 of the pay (inaudible) \$5 for the rest of those
20 pay periods. From that do you know how much of a
21 tip credit Famous Dave's claimed for my client?

22 A I do not.